

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 526 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI MANIBHAI UDANI

Versus

SHRIMAD BUDDHISAGAR SURESHWARJI JAIN SHWETAMBAR

Appearance:

MR Mihir Joshi for Mr. MITUL K SHELAT for Petitioners
MR AK CLERK for Respondent No. 1
NOTICE UNSERVED for Respondent No. 2
GOVERNMENT PLEADER for Respondent No. 8

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:18.8.2000

CAV JUDGEMENT

Rule. This Revision Application has been
filed against the judgment and order dated 15.5.99 passed
by the learned Assistant Judge, Ahmedabad (Rural) at

Gandhinagar refusing to grant interim injunction below application exh.5 in Regular Civil Suit no. 84 of 1999 which has been confirmed by the 2nd Joint District Judge, Ahmedabad (Rural) by the judgment and order dated 10th February, 2000 dismissing Civil Miscellaneous Appeal No. 73 of 1999.

2. The defendant no.1 is a registered trust.

The plaintiff no. 1 and defendant nos. 2 to 7 are trustees of the trust. The Upashraya is owned by the Trust. The Trust is planning to construct a Jain temple and for that purpose, huge amount as donations has been collected. Religious institutions in Jain community are run by the trustees at the advice and instructions of Jain Sadhus. The defendant no.1 trust was established as a result of inspiration given by the late Guru Durlabh Sagar Suriji who happened to be the Guru of plaintiff no. 2. The plaintiff no. 2 has been residing in Upashraya since long. It is stated that with great efforts of late Guru Durlabhsagar Suruji, the Upashraya was constructed. After the death of Guruji, the construction of the temple has been going on at the inspiration of the plaintiff no.2. One of the trustees, namely Sarabhai Sanghvi was informed in writing by Durlabhsagarji that the trustees of the trust would be appointed as per instructions of the plaintiff no. 2. The plaintiff no.2 has become Sadhu at the age of 11 years. He is moving from one place to another and he was residing in Upashraya with Guruji Durlabhsagar Suriji for the last 10 years. On the false news published in the newspaper regarding character of the plaintiff no.2, the defendant nos. 2 to 7 are trying to remove the plaintiff no. 2 from Upashraya just to demoralise him. Hence, the suit was filed for a declaration and permanent injunction alongwith application exh. 5 for interim injunction.

3. The defendants have filed their written statement cum reply resisting the application contending that some of the trustees of the trust have not been joined in the suit, hence the suit is bad for non-joinder of the parties, as per the principles of Jain religion, the plaintiff has no vested right to stay in the Upashraya and the Court has no jurisdiction to try the suit. Besides the object of giving education to the children and elders belonging to Jain Shwetamber Murtipujak community, the object of the trust is to serve the sadhus and Sadhvis of the Jain religion who are because of their physical weakness not able to move from one place to another (Vihar). Durlabhsagarji who died was also moving from one place to another place in spite of his weak health and was not consistently residing in

the Upashraya. It is also alleged that the plaintiff no.2 who is Jain Muni is not behaving according to principles of Jain religion. Due to some incident, the members of Jain community wrote a letter to the trustees and requested them to do needful in the matter. The trustees requested the plaintiff no.2 to leave the Upashraya. Accordingly, the plaintiff no.2 had voluntarily left the place who had taken the keys of some of the cupboards of the Upashraya. The defendants denied that the plaintiff no.2 is in possession of the hall managed by the trust. The Jain temple and Upashraya are in the hall and Pooja ceremony is being performed everyday. The plaintiff no.2 has no civil, legal or vested right to stay there merely because he was the disciple of Guru Durlabhsagarsuriji.

4. The trial court came to the conclusion that the plaintiff no.2 has no right of permanent stay in the Upashraya. It is observed by the trial court that at the most the plaintiff no. 2 can be said to be a licensee and therefore, he cannot claim for a permanent right to stay in the Upashraya. Even if it is assumed for the sake of argument that the Jain Muni had a right to stay in the Upashraya, that right also is subject to the control of the trustees who are managing the affairs of the trust. If they find on an inquiry that it would not be in the interest of the trust to allow a person to stay in the Upashraya, they had a right to take such a decision.

5. The application for interim injunction was rejected by the trial court. The lower appellate court held that after the acceptance of the Diksha by the plaintiff no.2, it amounts to civil death, hence according to the principles of Jain religion, the plaintiff no.2 cannot have any right over the trust property. The plaintiff no.2 being the disciple of late Guru Durlabhsagar Suriji, cannot claim any vested right to stay in the Upashraya permanently because the Upashraya was constructed at the inspiration of late Guru Durlabhsagar Suriji. Even the Trust was established as a result of inspiration given by late Guru Durlabhsagar Suriji and even he was residing in the Upashraya, the plaintiff no. 2 cannot claim such a right. Jain Sadhus and Sadhvis cannot stay at one place permanently without any reasonable cause like physical weakness etc. Thus, the plaintiffs mainly based his claim to stay in the Upashraya is not legally tenable nor created vested right in favour of the plaintiff no.2 and the appeal has been dismissed.

6. Heard the learned counsel for the parties. The learned counsel for the petitioners submitted that the institution is made only for Jain Sadhus and Sadhvis. They can stay 2 to 4 days during Vihar. At the inspiration of the Guru, the present Trust property was constructed. A huge amount has been donated at the inspiration of the petitioners. The petitioner no.2 was living with his Guru. As such, even if the petitioner has no right to live permanently, but being a Jain Muni, has a right to stay for two to four days and during rainy season and in case of weakness or sickness, otherwise to go on Vihar. The petitioner has no claim to reside permanently in the Upashraya. His claim is only to stay himself for few days during the Vihar. It was stated in the rejoinder affidavit before the trial court that there was a bungling in the accounts, hence the petitioner wanted to intervene. Hence, he was kicked out by the trustees. Both the courts below assumed that the petitioner no. 2 wanted to live permanently, but there is no such relief to live permanently or permanent stay. As such, the courts below have erred in assuming the relief of the petitione no.2 that he wanted to live permanently in the Upashraya and committed an error in holding otherwise.

7. On the other hand, the learned advocate for the respondents contended that both the courts below have recorded concurrent findings and this Court should not interfere with the findings of the courts below. If this Court comes to the conclusion that if another view is also possible, then also this Court should not interfere with the concurrent findings of the courts below as those findings of the courts below are also based on the material and evidence on record. The petitioner no.2 has no vested legal or civil right to stay permanently in the Upashraya. That is against the principles of Jain religion.

8. I have considered the rival contentions of the learned advocates for both the parties and perused the papers on record. This is a case in which it is not disputed that the Upashraya was constructed at the inspiration of Guru Durlabhsagar Suri ji. The petitioner was also living with him. The huge amount has been donated at the inspiration of the petitioner no.2 for the construction of Jain temple. The object is to serve Sadhus and Sadhvis of Jain, who are because of physical weakness not able to move from one place to another. It is also not denied that these Jain Sadhus and Sadhvis can stay during rainy season and for two to four days during Vihar. The object of the Upashraya is to import

religious education to children and young persons of Jain community and to serve Jain Sadhus and Sadhvis who are physically weak and are unable to move from one place to another. The trial court has mentioned that the plaintiff no.2 has stated that he has inspired many persons to donate funds for the trust activities. There is no much dispute on this point i.e. on the point of interest taken by the plaintiff no.2. However, the plaintiff no.2 has not produced any evidence. It is also observed by the trial court that as per the principle of Jain religion, during Vihar, Sadhus can stay in the Upashraya only for a period of two to four days and cannot stay longer in the Upashraya unless in the circumstances mentioned in the constitution of the Trust. It is also observed by the trial court that it was submitted on behalf of the defendants that if such Sadhus visit the Upashraya during their Vihar, they are also wel-come but they have no right of permanent stay in the Upashraya. The lower appellate court has observed that it appears from the fact that the plaintiff no.2 claims his right to stay in the Upashraya of the trust mainly on the following grounds.

- (1) Late Shri Durlabhsagar Suri ji Maharaj who initially inspired to establish the trust was also staying in the Upashraya.
- (2) The plaintiff no.2 is the disciple of late Shri Durlabhsagar Suri ji Maharaj.
- (3) Sarabhai Sanghvi one of the trustees was informed by late Shri Durlabhsagar Suri ji in writing that henceforth trustees of the trust would be appointed as per the instruction of the plaintiff no.2.
- (4) There is a plan to construct the Jain temple and for that purpose huge amount has been collected at the instance of the plaintiff no.2.
- (5) The management of the Jain religious trust is being run at the advice and instructions of the Jain Sadhus.

9. The learned counsel for the respondents stated in this Court that they will not permit the petitioner no.2 to enter into the Upashray, meaning thereby that leaving aside the question of stay,, they are adamant not to permit him even to enter into the Upashraya. Thus, it appears tht they are not permitting him to stay even for two-four days during Vihar.

10. After considering the submissions made by the learned advocates for the parties, it appears to this Court that even the petitioner no.2 has no legal or

vested right to live permanently but being a Jain Muni, he has a right to stay for a period of two to four days during Vihar and during rainy season and in case of sickness, he is unable to move from one place to another. For the present, I am not entering into the controversy regarding allegations made against the petitioner no.2 that he misbehaved with one Ranchhodbhai Patel or the allegations against the petitioners reported in the newspapers. The petitioner no.2 hasgp9

affiliation to the trust property as his instance huge amount has been collected for the construction of the jain temple, whereas the Upashraya was constructed at the inspiration of his Guru Durlabhsagar Suriji. The petitioner no.2 was residing with the Guruji till his death. When he found some bungling in the ccounts of the trust, he intends to interfere with the accounts of the trust and he was attacked by four unknown persons, as a result of the attach by unknown persons with some solid object, bleeding took place from the mouth of the petitioner no.2 and on shouting, local residents had gathered and two of the four assailants were caught on the spot. No police report was recorded in respect of this incident and that incident was said to have taken place due to dispute of the trust property. The petitioner has at least a right to stay for a period of two to four days during Vihar even if he has no right to stay permanently. As the plaintiff no.2 has an affiliation to the property of the Jain institution, which has been constructed at the instance of his Guru Durlabhsagar Suriji and at his instance and inspiration, a huge amount has been collect for the construction of the jain temple. Even if the petitioner no.2 has no legal or vested right but as per constitution of the Trust, he has a right to stay for a short time of two to four days during Vihar and it is a moral duty of the trustees of the trust to allow him to stay in the Upashraya for that purpose.

11. Considering the fact that while exercising revisional jurisdiction, this Court should not interfere with the concurrent findings of the courts below, but where the miscarriage of justice has been done to the plaintiff no.2 in view of the fact that the Upashraya was constructed at the inspiration of his Guruji Shri Durlabhsagar Suriji and he was residing with his Guruji till his death, at the instance and inspiration of the plaintiff no. 2, huge amount has been collected for the construction of Jain Temple, he has affiliation to the jain institution it would be improper and unjust if he is not permitted to enter into and stay for few days, two to four days during Vihar or if he is

unable to move for Vihar due to physical unfitness, consistent with the constitution of the Trust. The main object of whole judicial system is to provide substantial justice to the parties. In the facts and circumstances of the case, the judgments and orders passed by the courts below deserve to be set aside and the injunction application deserves to be allowed to the extent that the petitioner no.2 be permitted to stay in the Upashraya for two to four days during Vihar and in case of physical weakness and sickness which is in consonance and consistence with the principles of Jain trust.

12. Accordingly, this Revision Application is allowed in part . The judgments and orders of the courts below are hereby quashed and set aside. The application exh. 5 filed by the petitioners in the lower court is allowed to the extent that the respondents are directed to permit the petitioner no.2 to stay in the Upashraya for two to four days during Vihar and for sufficient time during sickness or physical weakness and during rainy season. In that period, the respondents are restrained from obstructing the access and entry of the petitioner no.2 to the property of the respondent no.1 Trust at Chandkheda including the Derasar and Upashraya. Rule made absolute accordingly with no order as to costs.

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